

JS 44
(Rev. 3/99)**CIVIL COVER SHEET**

The JS - 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THIS FORM.)

I. (a) PLAINTIFFS

Jimmie Allison

DEFENDANTS

Boeing Laser Technical Services

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF DONA ANA, NM
(EXCEPT IN U.S. PLAINTIFF CASES)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

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ATTORNEYS (IF KNOWN)

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II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- (For Diversity Cases Only)
- | | | | | | |
|---|----------------------------|-----|----------------------------|-----|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | PTF | <input type="checkbox"/> 1 | DEF | <input type="checkbox"/> 1 |
| Citizen of Another State | <input type="checkbox"/> 2 | PTF | <input type="checkbox"/> 2 | DEF | <input type="checkbox"/> 2 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | PTF | <input type="checkbox"/> 3 | DEF | <input type="checkbox"/> 3 |
| Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | PTF | <input type="checkbox"/> 4 | DEF | <input type="checkbox"/> 4 |
| Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | PTF | <input type="checkbox"/> 5 | DEF | <input type="checkbox"/> 5 |
| Foreign Nation | <input type="checkbox"/> 6 | PTF | <input type="checkbox"/> 6 | DEF | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input checked="" type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities / Commodities / Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing / Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgement

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Wrongful discharge, breach of implied contract, and other state law claims based on conduct relating to Plaintiff's employment on Kirtland Air Force Base, a federal enclave over which the federal government has exclusive jurisdiction.

VII. REQUESTED IN COMPLAINT:CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P.23**DEMAND**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

s/ Stanley K. Kotovsky, Jr.

MARCH 23, 2009

FOR OFFICE USE ONLY

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JIMMIE ALLISON,

Plaintiff,

vs.

No.

**BOEING LASER TECHNICAL
SERVICES,**

Defendant.

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that, pursuant to Title 28 U.S.C. §§ 1441 and 1446, Defendant BOEING LASER TECHNICAL SERVICES ("Boeing LTS"), hereby removes to this Court the state court action described below:

1. Plaintiff, who is alleged to be a resident of the State of New Mexico, filed this civil action (the "Action") in the Second Judicial District Court, Bernalillo County, State of New Mexico, on or about September 17, 2008. The Action was assigned Docket No. CV-2008-09877. Plaintiff filed a First Amended Complaint on November 10, 2008, substituting Boeing LTS as a Defendant in place of The Boeing Company. Defendant voluntarily accepted service of the First Amended Summons and First Amended Complaint on December 2, 2008. Copies of the First Amended Summons, First Amended Complaint, and Acceptance of Service and Entry of Appearance are

attached hereto as Exhibits 1, 2, and 3, respectively. Defendant timely answered the First Amended Complaint on January 5, 2009. A copy of the Answer is attached hereto as Exhibit 4.

2. The Action is now pending in the Bernalillo County Second Judicial District Court, which court is in the territory of the U.S. District Court for the District of New Mexico.
3. In the Action, Plaintiff alleges a number of New Mexico state law claims against Defendant. All of Plaintiff's claims against Defendant arise out of his employment with Defendant. Plaintiff was employed by Defendant and worked for Defendant in Buildings 399, 416, and 774 of Kirtland Air Force Base. As shown in the documents attached hereto as Exhibit 5, the land on which Buildings 399, 416 and 774 of Kirtland Air Force Base are located is a federal enclave and is land over which the federal government has exclusive jurisdiction pursuant to U.S. Const. art. 1, § 8, cl. 17.
4. As such, this is a civil action over which this Court has exclusive jurisdiction pursuant to 28 U.S.C. § 1331 (federal question). *See* 28 U.S.C. § 1331; *Akin v. Ashland Chemical Company*, 156 F.3d 1030, 1034 and n.1 (10th Cir. 1998).
5. Plaintiff's claims are removable to this Court under federal question jurisdiction pursuant to the provisions of 28 U.S.C. § 1441(a), (b) and (c).

6. Defendant first learned that Buildings 399, 416 and 774 of Kirtland Air Force Base were located on a federal enclave when it received documents from the U.S. Air Force in response to a FOIA request that Defendant submitted to Kirtland Air Force Base. (Pertinent portions of the FOIA response are attached to Exhibit 5 hereto). The FOIA response was received by undersigned counsel for Defendant on February 23, 2009. See Exhibit 6.
7. As this Notice of Removal is filed within 30 days of when Defendant first learned that there was federal jurisdiction over this matter, this Notice of Removal is timely filed under 28 U.S.C. § 1446(b). *Akin*, 156 F.3d at 1035.
8. Defendants will file a Notice of Removed Action in the Second Judicial District Court, Bernalillo County, State of New Mexico. A true and correct copy of said Notice of Removed Action is attached hereto as Exhibit 7.

WHEREFORE, Defendant Boeing Laser Technical Services respectfully requests that this Court assume full jurisdiction over the cause herein as provided by law.

DATED this 23rd day of March, 2009.

TINNIN LAW FIRM

By: /s/ Stanley K. Kotovsky, Jr.
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Attorneys for Defendant

Certificate of Service

I hereby certify that on the 23rd day of March, 2009, I electronically transmitted the attached document to the Clerk's Office using the ECF Systems for filing, and I served the attached document and transmittal of a Notice of Electronic Filing to the following who are not registered participants of the CM/ECF System:

Michael L. Danoff
Michael Danoff & Associates, P.C.
604 Chama, NE
Albuquerque, NM 87108
Attorneys for Plaintiff

/s/ Stanley K. Kotovsky, Jr.

7120477.1 (OGLETREE)